SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000065 11/25/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

STATE OF ARIZONA GARY L SHUPE

v.

KENNETH PAUL STANCZAK NEAL W BASSETT

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #6050664

Charge: 2. HIT AND RUN (NON-INJURY ACCIDENT)
3. FAILURE TO PROVIDE PROOF F/R
4. FAILURE TO CONTROL SPEED TO AVOID A COLLISION

DOB: 01/17/60

DOC: 06/08/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since its assignment on October 28, 2002. This Court has reviewed and considered the record of the proceedings from the Phoenix City Court, the exhibits made of record, and the excellent Memoranda submitted by counsel.

Appellant, Kenneth Paul Stanczak, was arrested June 8, 2001 within the City of Phoenix and was charged with several offenses: (1) Driving While Under the Influence of Intoxicating

Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1), and this charge was dismissed prior to trial; (2) "Hit and Run" or Failing to Stop for a Non-Injury Accident, a class 3 misdemeanor offense in violation of A.R.S. Section 28-662(A); (3) Failure to Provide Proof of Financial Responsibility, a civil traffic matter in violation of A.R.S. Section 28-4135(C); (4 and 5) Two counts of Failure to Control Speed to Avoid a Collision, both civil traffic offenses in violation of A.R.S. Section 28-701(A); and (6) Reckless Driving, a class 2 misdemeanor in violation of A.R.S. Section 28-693. Appellant waived his rights to a trial by jury and the case was submitted to the court on stipulated evidence. Appellant was found guilty and responsible of all charges except the DUI charge (which was dismissed). For the Reckless Driving charge, Appellant was ordered to serve ten (10) days in jail, eight (8) days were suspended contingent upon Appellant's successful completion of the SASS Program. Appellant was fined $443.00 and ordered to pay restitution of $4,750.50 on the Reckless Driving charge. Appellant was also ordered to spend ten (10) days in jail (8 days suspended) and to pay a fine of $443.00 for the Failing to Stop at the Scene of the Accident charge. The fine and jail were ordered to be concurrent with the fine and jail ordered on the Reckless Driving charge. All other fines and sentences were suspended for the other charges (No Proof of Financial Responsibility and the 2 counts of Failure to Control Speed to Avoid Collisions). Appellant filed a timely Notice of Appeal in this case.

The first issue raised by the Appellant is that the sentencing portion of A.R.S. Section 28-4135(E) is unconstitutional. Appellant contends that the mandatory minimum fine of $250.00 is imprecise and that the statute fails to set a maximum fine.

Appellant raises a number of issues of constitutional dimension pertaining to the failure to provide proof of insurance statute.[1] In matters of statutory interpretation, the standard of review this court must utilize is de novo.[2] Appellate court's must review the constitutionality of a statute *de novo*[3]. There is a strong presumption in Arizona that questioned statutes are presumed to be constitutional, and the party asserting unconstitutionality has a burden of clearly demonstrating the unconstitutionality.[4] Whenever possible, a reviewing court should construe a statute so as to avoid rendering it unconstitutional, and resolve any doubts in favor of constitutionality.[5] A statute is unconstitutionally vague if it fails to give persons of average intelligence reasonable notice of what behavior is prohibited, or if it is drafted in such a manner that permits arbitrary and discriminatory enforcement.[6] A statute may be impermissibly vague when it fails to establish standards for the police and public that are sufficient to guard against

[1] A.R.S. Section 28-4135.
[2] In re: Kyle M., 200 Ariz. 447, 27 P.3d 804 (App. 2001). See also, State v. Jensen, 193 Ariz. 105, 970 P.2d 937 (App. 1998).
[3] Ramirez v. Health Partners of Southern Arizona, 193 Ariz. 325, 972 P.2d 658 (App. 1998).
[4] State v. Lefevre, 193 Ariz. 385, 972 P.2d 1021 (App. 1998); Larsen v. Nissan Motor Corporation in the United States, 194 142, 978 P.2d 119 (App. 1998).
[5] Id.
[6] State v. Lefevre, supra.; State v. Steiger, 162 Ariz. 138, 781 P.2d 616 (App. 1989).

the arbitrary deprivation of liberty interests.[7] Due process does not require that a statute be drafted with absolute precision.[8] Whenever the language of a legislative enactment is unclear, the courts must strive to give it a sensible construction and, if possible, uphold the constitutionality of that provision.[9]

Appellant contends that the fine discussed in A.R.S. Section 28-4135(E)(1) is mandatory. However, the statute clearly states that the court "may impose a minimum civil penalty of $250.00 for the first violation...(emphasis added)." The language utilized by the legislature makes it clear in the use of the word "may" that the fine is not a mandatory fine. Appellant also contends that the legislature failed to specify a mandatory fine. This contention is incorrect as A.R.S. Section 28-1598 provides that penalties imposed pursuant to this Article "shall not exceed $250.00." This Court concludes that the language utilized within the statute is not unclear, is not vague or subject to arbitrary interpretation.

Appellant also contends that the same statute constitutes an "excessive fine" and "cruel and unusual punishment". Appellant fails to cogently explain how the fine is excessive and also constitutes cruel and unusual punishment. This Court notes that no fine was imposed by the trial court. In fact, sentence was suspended with no penalty imposed at all for the charge of failing to provide proof of financial responsibility, in this case. It is clear to this Court that the punishment was not excessive nor was it cruel or unusual in this matter.

The last issue raised by Appellant is that the charges of Failing to Control Speed to Avoid a Collision were lesser included offenses of the charge of Reckless Driving, and should have been dismissed. An offense is a lesser included offense of another crime "…if the lesser offense is composed of some but not all of the elements of the greater crime so that it is impossible to commit the greater (crime), without committing the lesser offense."[10] This Court rejects Appellant's contentions finding that the crimes of Failure to Control Speed to Avoid a Collision are not always an element of the crime of Reckless Driving. The crime of Reckless Driving can be committed without regard to the speed of the vehicle or whether a collision was involved.

Finding no error,

IT IS ORDERED affirming the convictions and findings of responsibilities and sentences imposed by the Phoenix City Court.

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[7] Recreational Developments of Phoenix, Inc. v. City of Phoenix, 83 F.Supp.2d 1072 (D Ariz. 1999), citing City of Chicago v. Morales, 527 U.S. 41, 119 S.Ct. 1849, 144 L.Ed.2d. 67 (1999).
[8] State v. Lefevre, supra; State v. Takacs, 169 Ariz. 392, 819 P.2d 978 (App. 1991), citing Fuenning v. Superior Court, 139 Ariz. 590, 680 P.2d 121 (1983).
[9] State v. Fuenning, supra; see Maricopa County Juvenile Action No. JT9065297, 181 Ariz. 69, 887 P.2d 599 (App. 1994), citing State v. Wagstaff, 164 Ariz. 485, 794 P.2d 118 (1990).
[10] State v. Foster, 191 Ariz. 355, 357, 955 P.2d 993, 995 (App. 1998).

IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all further and future proceedings in this case.